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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)	No. CR 06-433 VRW
)	
11 Plaintiff,)	STIPULATION TO VACATE MOTION
)	HEARING AND SET CASE FOR
12)	STATUS
13 v.)	
)	Date: August 15, 2006
14)	Time: 10:30 a.m.
GERARDO ALAMILLA-BARCENAS,)	Court: The Honorable Vaughn R. Walker
)	
15 Defendant.)	
16)	

17 The parties stipulate and respectfully request as follows:

- 18 1. A briefing schedule on Defendant's Motion to Dismiss the Indictment has been
19 established by this Court as follows:

20 Opening Motion Due: July 25, 2006

21 Response Due: August 8, 2006

22 Reply Due: August 11, 2006

23 Motion Hearing: August 15, 2006, at 10:30 a.m.

- 24 2. Defense counsel David Fermino has now been officially replaced by Assistant
25 Federal Public Defender Elizabeth M. Falk, who is counsel of record and will so
26 remain during the pendency of these proceedings;

- 1 3. When initially covering the case for Mr. Fermino on June 20, 2006, Ms. Falk
2 conducted a preliminary review of Mr. Alamilla-Barcenas' file and determined
3 that there was a due process challenge to Mr. Alamilla-Barcenas' 1996
4 deportation hearing, as he was not advised that he was potentially eligible for a
5 waiver under Section 212(c) of the Immigration and Nationality Act;
- 6 4. As a result of Ms. Falk's preliminary review, Chief Assistant Federal Public
7 Defender Geoffrey Hansen appeared before this Court on June 26, 2006 to set the
8 case for a motion hearing on Defendant' Motion to Dismiss the Indictment on the
9 grounds articulated above, and requested the above briefing schedule;
- 10 5. One June 26, 2006, Ms. Falk met with Mr. Alamilla-Barcenas. Since that date, she
11 has also reviewed additional discovery provided by the government. Specifically,
12 the government provided Ms. Falk with a copy of Mr. Alamilla-Barcenas'
13 subsequent deportation hearing before an immigration judge in 2001 in Eloy,
14 Arizona;
- 15 6. Upon review of the tape of this subsequent 2001 deportation hearing, it is the
16 professional opinion of Ms. Falk that a motion collaterally attacking the 1996
17 deportation hearing would not benefit Mr. Alamilla-Barcenas, and would
18 potentially be a waste of the resources of this Court as the government could
19 instead simply rely on the 2001 deportation proceedings to charge Mr. Alamilla-
20 Barcenas under 8 U.S.C. § 1326, even if a successful collateral attack was made
21 on the 1996 deportation proceeding;
- 22 7. Under these circumstances, the parties hereby stipulate and request this Court to
23 vacate the Motion Hearing date of August 15, 2006, and also to vacate the
24 briefing schedule set forth above;
- 25 8. The parties additionally request this Court to set the case for status on August 15,
26 2006, at 10:30 a.m. before this honorable Court. The reasons for the lengthy delay

in requesting a status appearance before the Court are as follows;

9. Ms. Falk learned last week that she will need to be out of the country in both the Republic of Cyprus and Malta to take Rule 15 depositions in the matter of *United States v. Roman Vega*, CR-04-101 CRB, between July 17 and August 10, 2006. These dates have been established by the United States Attorney's Office and the appropriate judicial authority in Malta, and are not within the control of defense counsel. As such, defense counsel will not be able to appear on behalf of Mr. Alamilla-Barcenas prior to August 15, 2006, at 10:30 a.m.;

10. As a result of defense counsel's unexpected absence from the United States, the parties stipulate and respectfully request this Court to set the date of August 15, 2006, at 10:30 a.m. as the next status date, and to exclude time under the Speedy Trial Act as requested in the Proposed Order, on the basis of continuity of counsel.

IT IS SO STIPULATED

Dated: July 11, 2006

_____/S/_____
NAHLA RAJAN
Assistant United States Attorney

Dated: July 11, 2006

_____/S/_____
ELIZABETH M. FALK
Assistant Federal Public Defender

~~PROPOSED~~ ORDER

For the reasons stated herein, and for good cause shown, the briefing schedule and motion hearing date previously established by this Court for Defendant's Motion to Dismiss the Indictment in the aforementioned case are hereby VACATED. The parties are hereby ORDERED to appear for a status conference on August 15, 2006, at which time a trial date shall be set by this Court.

1 For the reasons stated herein, including the unavailability of defense counsel, to serve the
2 purpose of providing the defendant with continuity of counsel, and for good cause shown, this
3 Court also finds that the ends of justice served by excluding the period from July 25, 2006 to
4 August 15, 2006 outweigh the interest of the public and the defendant in a speedy trial, and
5 orders that the period from July 25, 2006 to August 15, 2006, is excluded from Speedy Trial Act
6 calculations pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv).

7
8 **IT IS SO ORDERED.**

9
10 Dated: 7/13/06



11 THE HONORABLE VAUGHN R. WALKER
12 CHIEF UNITED STATES DISTRICT JUDGE
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